Supreme Court, U.S.
FILED
JAN 31 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-997

In The

Supreme Court of the United States

October Term, 1989

MARGUERITE L. JACKSON, ET AL.,

Petitioners,

v.

GEORGE E. RUSSELL,

Respondent.

On Petition For Writ Of Certiorari To The Indiana Court Of Appeals

RESPONDENT'S BRIEF IN OPPOSITION

ROBERT F. ZOCCOLA
ALAN S. BROWN
TODD J. KAISER
LOCKE REYNOLDS BOYD & WEISELL
1000 Capital Center South
201 North Illinois Street
Indianapolis, Indiana 46204
(317) 237-3800
Counsel for Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Whether a reviewable federal question is raised under the full faith and credit clause of the United States Constitution where the forum state does not deny the validity of the laws of a sister state but merely construes the sister state's laws to have no application to the case.

2. Whether Indiana has sufficient forum contacts with the parties and the occurrence giving rise to the litigation to justify application of its laws.

3. Whether a substantial federal question has been raised.

LIST OF PARTIES

The Respondent, George E. Russell ("Russell") is a judgment creditor of Petitioner C.W. Jackson ("Jackson"). On September 24, 1984, the Boone Circuit Court of Indiana entered judgment on behalf of Russell and against Jackson in the amount of $2,000,000 plus interest and costs. The remaining Petitioners, Jackson Plastics Company, Excelarium Products Corporation, Columbus Air Corporation, Tiger Development Company, and Marguerite L. Jackson ("Mrs. Jackson"), are garnishee defendants who were added to the case following hearings on proceedings supplemental to execution on the judgment.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 3

CONSTITUTIONAL PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 4

REASONS WHY THE PETITION SHOULD BE DENIED 8

1. The Indiana Court of Appeals did not decide a federal question 8

2. Indiana has sufficient forum contacts with the parties and the occurrence giving rise to the litigation to justify application of Indiana law 13

3. Petitioners have not raised a substantial federal question 21

CONCLUSION 22

TABLE OF AUTHORITIES

Page

CASES

Alaska Packers Ass'n v. Industrial Acc. Comm'n, 294 U.S. 532 (1935) 14, 16, 17, 20

Allstate Ins. Co. v. Hague, 449 U.S. 302 (1981) 14, 16, 17, 21, 22

Arnold v. Dirrim, 398 N.E.2d 442 (Ind.App. 1979) 9

Bradford Electric Light Co. v. Clapper, 286 U.S. 145 (1932) 14

Carroll v. Lanza, 349 U.S. 408 (1955) 16, 17

Clark v. Williard, 292 U.S. 112 (1934) 17, 18, 20

Clark v. Williard, 294 U.S. 211 (1935) 19, 20

Fry Roofing Co. v. Wood, 344 U.S. 157 (1952) 11

Gable v. Columbus Cigar Company, 140 Ind. 563, 38 N.E. 474 (1895) 9, 10

Grayson v. Harris, 267 U.S. 352 (1925) 11

Guaranty Trust Company v. New York, 326 U.S. 99 (1945) 12

Herb v. Pitcairn, 324 U.S. 117 (1945) 8

Hervey v. Rhode Island Locomotive Works, 93 U.S. 664 (1877) 19, 20

Illinois v. Gates, 462 U.S. 213 (1983) 8

Jackson v. Russell, 498 N.E.2d 22 (Ind. App. 1986) 2, 15

Jackson v. Russell, 553 N.E.2d 153 (Ind. App. 1989) 10, 11, 13, 16

King v. Uhlmann, 437 P.2d 928 (Ariz. 1968) 11

TABLE OF AUTHORITIES -- Continued

Page

Louisville and N. R. Co. v. Melton, 218 U.S. 36 (1910) 12

National Industries, Inc. v. Republic Nat'l Life Ins. Co., 677 F.2d 1258 (9th Cir. 1982) 11

Nevada v. Hall, 440 U.S. 410 (1979) 14, 16

Pacific Employers Ins. Co. v. Industrial Accident Comm'n of State of California, 306 U.S. 493 (1939) 14, 15, 17

Pennsylvania Fire Ins. Co. v. Gold Issue Min. and Mill. Co., 243 U.S. 93 (1917) 11, 12

Phillips Petroleum Co. v. Shutts, 472 U.S. 797 (1985) .. 15, 21

Sun Oil Co. v. Wortman, 486 U.S. 717 (1988) 11, 21

Watson v. Employer's Liability Assurance Corp., 348 U.S. 66 (1954) 16

Western Life Indemnity Co. of Illinois v. Rupp, 235 U.S. 261 (1914) 12

CONSTITUTIONAL PROVISIONS

XIV Amendment U.S. Constitution 4

STATUTES AND RULES

28 U.S.C. § 1257(a) 3, 8

Ind. Code § 32-2-1-14 2

Ind. Code § 35-43-1-2 2

No. 89-997

In The

Supreme Court of the United States

October Term, 1989

MARGUERITE L. JACKSON, ET AL.,

Petitioners,

v.

GEORGE E. RUSSELL,

Respondent.

On Petition For Writ Of Certiorari To The Indiana Court Of Appeals

RESPONDENT'S BRIEF IN OPPOSITION

Respondent, George E. Russell, respectfully prays that Petitioners' Petition for Writ of Certiorari be denied.

OPINIONS BELOW

This case originates from a judgment entered in late 1984. On September 24, 1984, judgment was entered by the Boone Circuit Court of Indiana on behalf of Russell and against Jackson in the amount of $2,000,000 plus costs and interest. The judgment was entered following a

four-week trial in which a jury concluded that Jackson had tortiously interfered with a contract, committed constructive fraud, breached his fiduciary duty to a joint venturer, and violated the Indiana Criminal Mischief Statute, Ind. Code § 35-43-1-2. Jackson appealed and the judgment was affirmed by *Jackson v. Russell*, 498 N.E.2d 22 (Ind. App. 1986). Jackson's Petition for Rehearing in the Court of Appeals and Petition for Transfer to the Indiana Supreme Court were denied. This matter stems from the attempted execution and satisfaction of this judgment.

Through hearings on proceedings supplemental to execution on the judgment and discovery, Russell learned of several post-judgment transfers by Jackson of his property situated in Indiana. Russell filed a Petition for Finding of Fraudulent Conveyances pursuant to Ind. Code § 32-2-1-14, in order to set these transfers aside and make the involved assets available to satisfy the judgment. The garnishee defendants, Jackson Plastics Company, an Indiana general partnership, Excelarium Products Corporation, an Arizona corporation, Columbus Air Corporation, an Arizona corporation, Tiger Development Company, an Arizona general partnership, and Marguerite L. Jackson, were added to the case. Trial of the fraudulent conveyance petitions was conducted to the Boone Circuit Court on June 24-26, 1987. On October 14, 1987, the trial court entered its Findings of Fact, Conclusions of Law and Order (see Appendix "D" to Petition for Writ of Certiorari). On October 26, 1987, the trial court issued a charging order in regard to execution against Jackson's property which the trial court found was fraudulently conveyed. Jackson appealed this order and Russell filed a cross-appeal.

The Court of Appeals of Indiana issued its decision on January 17, 1989. The decision affirmed the rulings of the trial court with regard to Jackson's interest in Jackson Plastics Company, an Indiana partnership, concluding that it was subject to execution before the judgment and was fraudulently conveyed after the judgment. The Court of Appeals reversed the trial court in regard to the finding that Jackson's stock in Como Plastics Corporation, an Indiana corporation, was not subject to execution before it was conveyed.

JURISDICTION

Petitioners have sought to invoke this Court's jurisdiction pursuant to 28 U.S.C. § 1257(a). Petitioners contend that the Indiana Court of Appeals has passed upon a right "specifically set up or claimed under the Constitution." This Court lacks jurisdiction to review this matter. The Indiana Court of Appeals did not consider or decide a federal question. The Court of Appeals of Indiana considered Arizona law and determined that it did not apply in this situation. It concluded that there was no conflict of laws, no denial of full faith and credit, and no denial of due process.

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioners contend that Indiana has denied full faith and credit to the rights of Marguerite L. Jackson as established under Arizona law and that her rights to due process and equal protection of the law as guaranteed by

the fourteenth amendment of the United States Constitution have been violated. As will be demonstrated, Indiana did not deny full faith and credit to the laws of Arizona and did not deny due process to Mrs. Jackson.

STATEMENT OF THE CASE

Petitioners seek to portray this matter as one where Russell and the Indiana Court of Appeals are villians and Mrs. Jackson is the innocent victim. It is not disputed that Mrs. Jackson was not a party to the $2,000,000 judgment rendered against her husband. However, in the last five and a half years, Mrs. Jackson has joined her husband in a systematic scheme to render Jackson judgment-proof, by converting Indiana assets subject to execution into Arizona community property in an effort to prevent Russell from collecting a valid Indiana judgment, a judgment which was rendered because of Jackson's tortious and fraudulent conduct.

When judgment was entered on September 24, 1984, C.W. Jackson had been a resident of Arizona since 1969 and had been married to Marguerite L. Jackson for more than 40 years. He owned all of the stock of Como Plastics Corporation, an Indiana corporation created in 1980. Como Plastics operated a manufacturing plant out of a building which was owned by Jackson Plastics Company, an Indiana general partnership. The Jacksons were the only partners of Jackson Plastics, each owning 50%. Jackson Plastics was created in 1980 for the purpose of owning Como real estate and leasing it to Como Plastics Corporation. It was the Jacksons' usual practice to own

their real estate either in partnership or personally, for tax reasons.

At the time judgment was entered, Jackson Plastics also owned a parcel of land adjacent to the Como plant and two airplanes. Jackson Plastics operated without any change in its ownership through 1984.

Beginning two months after judgment was entered, Jackson Plastics began to transfer all of its property to the Jacksons or other entities owned and controlled by them. On November 27, 1984, Jackson Plastics transferred one of its airplanes, a Beechcraft King Air 90, to Columbus Air Corporation. All of the stock of Columbus Air Corporation was owned by the Jacksons.

Despite the fact that its only assets were located in Indiana, Columbus Air was incorporated in Arizona. The Articles of Incorporation of Columbus Air were filed in Arizona on December 13, 1984. No money whatsoever was paid by Columbus Air as consideration for the transfer of the airplane. The airplane was transferred through a bill of sale signed by the Jacksons as general partners of Jackson Plastics. This airplane had been acquired by Jackson Plastics about two months earlier.

On November 28, 1984, Jackson Plastics transferred its second airplane, a Beechcraft Baron, to Columbus Air. Again, Columbus Air paid nothing as consideration for this transfer.

Also on November 28, 1984, Jackson Plastics transferred to Tiger Development Company, an Arizona partnership, the land adjacent to the Como Plastics plant.

This land was transferred by quitclaim deed. The Jacksons owned 100% of Tiger Development Company, since half of it was owned by them as individuals and the other half was owned by Lincoln Meadows Corporation, an Indiana corporation, in which the Jacksons owned all of the stock. Tiger Development paid nothing to Jackson Plastics in consideration for the transfer of this property.

After these transfers, one asset, the Como plant and real estate, remained in Jackson Plastics. This asset was transferred to the Jacksons as "husband and wife as their community property", on February 21, 1985. This transfer was made by quitclaim deed signed by C.W. Jackson as general partner of Jackson Plastics. Even though there was a minimum of several hundred thousand dollars of equity in the property, Jackson Plastics received no money for this transfer, except for the $10 stated as consideration in the deed. There was no change in the mortgage or loan documents as a result of this transfer.

After this transfer, Jackson Plastics had no assets. All of the assets of Jackson Plastics were conveyed in a three-month period either to Arizona entities owned entirely by the Jacksons or, in the case of the Como real estate, to the Jacksons personally "as their community property."

On March 11, 1985, Como Plastics was merged with Excelarium Products Corporation, an Arizona corporation, and Como Plastics was dissolved. The Jacksons owned all of the stock of Excelarium before and after the merger. No money changed hands as a result of the merger. The Jacksons simply received more stock in Excelarium. At the time of the merger, Como Plastics' stock transfer ledger and the Jacksons' stock certificates

indicated that the Jacksons owned Como's stock as joint tenants with rights of survivorship.

With the merger of Como into Excelarium, Jackson no longer owned any interest in Indiana partnerships or corporations, having transferred assets and ownership of Indiana entities to Arizona entities owned by him and his wife, except for a few parcels of Indiana real estate owned in tenancy by the entirety with his wife. Jackson contends that all property owned outside of Indiana is Arizona community property not subject to execution, including property once owned by Jackson Plastics and transferred after September 24, 1984. Jackson contends that he has no property available against which Russell can execute. Jackson has not paid the judgment because he contends he is not legally obligated to do so.

On June 27, 1986, and December 29, 1986, Russell filed a Petition for Finding of Fraudulent Conveyances and a supplement thereto, challenging these post-judgment transfers. A trial on the petitions was held in June, 1987, and the trial court issued its Findings of Fact, Conclusions of Law and Order on October 14, 1987. The decision of the Indiana Court of Appeals issued January 17, 1989, affirmed the findings of the trial court with regard to Jackson's interest in Jackson Plastics Company. The Court of Appeals agreed that Jackson's partnership interest was subject to execution and was fraudulently conveyed after the judgment. The Court of Appeals reversed the trial court in regard to the finding that Jackson's stock in Como Plastics Corporation, an Indiana corporation, was not subject to execution before it was conveyed and remanded to the trial court for proceedings consistent with the Court of Appeals' opinion. After the

Court of Appeals denied petitioners' Petition for Rehearing and the Indiana Supreme Court denied their Petition for Transfer, this Petition for Writ of Certiorari followed.

REASONS WHY THE PETITION SHOULD BE DENIED

1. The Indiana Court of Appeals did not decide a federal question.

Petitioners contend that certiorari jurisdiction in this case derives from 28 U.S.C. § 1257(a), which provides in part that "final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court . . . where any title, right, privilege or immunity is specifically set up or claimed under the Constitution . . . ." The thrust of Petitioners' argument is that the January 17, 1989, decision of the Indiana Court of Appeals violates the due process rights of Mrs. Jackson and fails to give full faith and credit to the community property laws of Arizona.

Jurisdiction under 28 U.S.C. § 1257 does not exist if two requirements – that a federal question be raised and that it be decided in the state court below – do not appear on the record. *Illinois v. Gates*, 462 U.S. 213, 217-218 (1983). As stated in *Herb v. Pitcairn*, 324 U.S. 117, 125-126 (1945), the rationale for the Court's inability to review state court judgments when no federal question has been decided:

> is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial

> systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its view of federal laws, our review would amount to nothing more than an advisory opinion.

The opinion of the Court of Appeals does not decide a federal question. Petitioners' due process and full faith and credit arguments rest on an incorrect assumption. Petitioners assume that the Indiana Court of Appeals' decision strips Mrs. Jackson of her property without due process of law, because it results in execution against community property, which the Jacksons argue is indivisibly owned by them. The incorrect assumption is that the decision allows execution against community property. It does not.

The Court of Appeals first determined whether the post-judgment transfers of the property by the Jacksons were fraudulent. The Court of Appeals determined that based upon the specific facts of this case, those transfers were fraudulent.

> An examination of the post-judgment Jackson transfers, as previously recounted in this opinion, shows that they comfortably fit within the *Arnold* [*Arnold v. Dirrim*, 398 N.E.2d 442, 446 (Ind.App. 1979)] indicia of fraud. Even though Jackson sets forth legitimate business purposes for each of the transactions, a pure motive on the part of the debtor in making a fraudulent transfer will not cleanse the transaction. *Gable v.*

> *Columbus Cigar Company* (1895), 140 Ind. 563, 38 N.E. 474.

Jackson v. Russell, 533 N.E.2d 153, 155 (Ind.App. 1989); Appendix to Petition for Writ of Certiorari, p. A-6.

The Court of Appeals was not concerned with how the property was owned subsequent to the transfers; only with how the property was owned prior to transfer. The trial court specifically determined, at least as to the interest in Jackson Plastics, that the Jacksons had elected to do business as partners and had expressly elected not to own their partnership interest as community property. As stated by the trial court:

> When Jackson and his wife elected to do business as a partnership, they expressly elected not to own their partnership interests in Jackson Plastics as community property.

(Trial court's Conclusions of Law, ¶ 5, Appendix to Petition p. A-27.) The trial court's opinion with regard to the Jackson's interest in the Jackson Plastics partnership was affirmed in all respects by the Court of Appeals.

The Court of Appeals reversed the trial court's decision as it related to the Como Plastics stock and remanded it for further proceedings. The Court of Appeals specifically determined that the original stock in Como Plastics was held by Jackson and his wife as joint tenants with rights of survivorship and not as community property. The Court of Appeals stated:

> The original stock in Como Plastics was held by Jackson and his wife as joint tenants with rights of survivorship as indicated by the stock certificates and the stock transfer ledger of the corporation.

Jackson v. Russell, 533 N.E.2d at 156; Appendix to Petition, p. A-8. By choosing to hold stock in Como Plastics as joint tenants, the Jacksons specifically elected not to hold the property as community property.

Under Arizona law, all property acquired by either or both of the spouses during coverture is presumed to be community property. *King v. Uhlmann*, 437 P.2d 928, 943 (Ariz. 1968). Despite this presumption, Arizona recognizes the right of a husband and wife to hold property as joint tenants in derogation of their community property status, provided it clearly appears that the spouses agree the property should be taken in that manner. *National Industries, Inc. v. Republic Nat'l Life Ins. Co.*, 677 F.2d 1258 (9th Cir. 1982). In this case, the Indiana courts determined that it was the intent of the Jacksons not to hold either the partnership property or the stock as community property. This is not a denial of full faith and credit or of due process. It is merely a determination of the Jacksons' intent which was consistent with Arizona law. This Court may not review state court findings of fact. *Fry Roofing Co. v. Wood*, 344 U.S. 157, 160 (1952); *Grayson v. Harris*, 267 U.S. 352, 358 (1925).

To constitute a violation of the full faith and credit clause or the due process clause, it is not enough that a state court misconstrue the law of another state. *Sun Oil Co. v. Wortman*, 486 U.S. 717 (1988); *Pennsylvania Fire Ins. Co. v. Gold Issue Mining and Milling Company*, 243 U.S. 93, 96 (1917). The full faith and credit clause requires only that states accord full faith and credit to other states' laws; that is, that states acknowledge the validity and finality of such laws and attempt in good faith to apply them when necessary as they would be applied by home

state courts. *Guaranty Trust Company v. New York*, 326 U.S. 99, 109 (1945). As Justice Holmes has explained, when "[t]here is nothing to suggest that [one's state court] was not candidly construing [another state's law] to the best of its ability, and even if it was wrong, something more than an error of construction is necessary" to invoke the jurisdiction of this Court pursuant to the full faith and credit clause of the Constitution. *Pennsylvania Fire Insurance Company v. Gold Issue Mining and Milling Company*, 243 U.S. 93, 96 (1917). See also *Western Life Indemnity Co. of Illinois v. Rupp*, 235 U.S. 261, 275 (1914); *Louisville and N. R. Co. v. Melton*, 218 U.S. 36, 50-51 (1910).

In this case, the Indiana courts examined the intent of the Jacksons and the laws of Arizona and correctly determined that the Jacksons' interest in Jackson Plastics was not community property and that the original stock in Como Plastics was held by Jackson and his wife as joint tenants and not as community property. Even if this decision is incorrect, it does not invoke the jurisdiction of this Court pursuant to the full faith and credit clause of the United States Constitution. *Pennsylvania Fire Ins. Co. v. Gold Issue Min. and Mill. Co.*, 243 U.S. 93, 96. Something more than a mere error of construction is necessary to invoke the jurisdiction of this Court.

Nor does the Court of Appeals' opinion violate Mrs. Jackson's right to due process of law. Since the Jacksons did not hold these interests as community property, the judgment of the Indiana Court of Appeals affected only Mr. Jackson's interest. It did not affect Mrs. Jackson's rights. As stated by the Court of Appeals:

> It also follows that our decision does not effect [sic] the property of Marguerite L. Jackson

> thereby rendering Jackson's third issue relating to due process moot.

Jackson v. Russell, 533 N.E.2d at 156; Appendix to Petition, p. A-8.

There is simply no federal question presented. The Indiana courts have examined the law of both states and concluded that under the facts, the property in question was not community property which was entitled to protection from judgment creditors. What petitioners try to characterize as a federal question is nothing more than an invitation to reconsider the evidence. This Court should decline that invitation.

2. Indiana has sufficient forum contacts with the parties and the occurrence giving rise to the litigation to justify application of Indiana law.

Russell believes that the Indiana courts did not deny full faith and credit to the laws of Arizona because the courts considered Arizona law and concluded the protections of community property did not attach to the partnership and stock interests. The Indiana Court of Appeals simply held that this particular property was not intended by the Jacksons to be held as community property. Nowhere in the Court of Appeals' opinion is it asserted or implied that Indiana would not give full force and effect to Arizona community property law if the Jacksons had intended to hold their personal property interests as community property. Nonetheless, for purposes of this argument section, Russell will assume that the Jacksons intended to hold the property as community property, but that Indiana chose to apply its law rather

than Arizona law. Even with this assumption, the treatment of the Jacksons by the Indiana courts was constitutionally sound.

Throughout their Petition, Petitioners claim that if they held their personal property as community property prior to its fraudulent transfer, then Indiana was required to give full faith and credit to Arizona law. This is incorrect. The full faith and credit clause does require each state to give effect to official acts of other states. A judgment entered in one state must be respected in another provided that the first state had jurisdiction over the parties and the subject matter. Moreover, in certain limited situations, the courts of one state must apply the statutory law of another state. *Nevada v. Hall*, 440 U.S. 410, 421 (1979); *Bradford Electric Light Co. v. Clapper*, 286 U.S. 145 (1932).

However, the full faith and credit clause does not require a state to apply another state's law in violation of its own legitimate public policy. *Nevada v. Hall*, 440 U.S. at 422; *Pacific Employers Ins. Co. v. Industrial Accident Comm'n of State of California*, 306 U.S. 493 (1939). On the contrary, in view of the fact that the forum state is also a sovereign in its own right, in appropriate cases it may attach paramount importance to its own legitimate interests. *Allstate Insurance Company v. Hague*, 449 U.S. 302, 323 (1981), Justice Stewart concurring. Otherwise, a rigid and literal enforcement of the clause without regard to the statutes of the forum would lead to the absurd result that wherever a conflict arises, the statute of each state must be enforced in the courts of another, but cannot be enforced in its own courts. *Alaska Packers Ass'n v. Industrial Acc. Comm'n*, 294 U.S. 532, 547 (1935). As stated by the Court in *Pacific Insurance Co.*:

> . . . we think the conclusion is unavoidable that the full faith and credit clause does not require one state to substitute for its own statute, applicable to persons and events within it, the conflicting statute of another state, even though that statute is of controlling force in the courts of the state of its enactment with respect to the same persons and events. . . .

Pacific Insurance Co. v. Industrial Accident Comm'n, 306 U.S. 493, 502-503.

A particular set of facts giving rise to litigation can justify, constitutionally, the application of more than one jurisdiction's laws. The due process clause and the full faith and credit clause thus provide modest restrictions on the application of forum law. These restrictions require that for a state's substantive law to be selected in a constitutionally permissible manner, that state must have a significant contact or a significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 818 (1985).

The choice of Indiana law was constitutional. Indiana had significant contacts with the parties and the occurrence giving rise to the litigation such that the choice of its law is neither arbitrary nor fundamentally unfair. Russell is a resident of Indiana; this case concerns the enforcement of an Indiana judgment; the property fraudulently conveyed was real estate owned by an Indiana partnership and stock in an Indiana corporation; and the wrongful acts giving rise to the original judgment were committed solely in Indiana in order to take ownership of Indiana real estate and an Indiana corporation. See *Jackson v. Russell*, 498 N.E.2d 22, 25.

Moreover, Jackson was a partner in an Indiana partnership and an owner of stock in an Indiana corporation. The Indiana Court of Appeals found this to be significant. It stated:

> Jackson's arguments about community property notwithstanding, the overriding facts are that Jackson is a partner in an Indiana partnership whose assets are located in Indiana.

Jackson v. Russell, 533 N.E.2d at 156; Appendix to Petition, p. A-7.

> Under the facts of this case, we are dealing with shares of stock in an Indiana corporation whose assets are located entirely in Indiana and which are owned by joint tenants.

Jackson v. Russell, 533 N.E.2d at 157; Appendix to Petition, p. A-9.

Indiana has a substantial interest in enforcing valid judgments rendered by its courts; in protecting its citizens from fraudulent acts which occur within its jurisdictional limits; and in the satisfaction of its judgments through the execution and attachment of property within its borders. In this case, Indiana had a significant aggregation of contacts with the parties and the occurrence which created state interests, such that the application of Indiana law was neither arbitrary nor fundamentally unfair. Accordingly, the choice of Indiana law by the Indiana Court of Appeals did not violate the due process clause or the full faith and credit clause. See *Allstate Insurance Company v. Hague*, 449 U.S. at 313; *Nevada v. Hall*, 440 U.S. 410; *Carroll v. Lanza*, 394 U.S. 408 (1955); *Watson v. Employer's Liability Assurance Corp.*, 348 U.S. 66

(1954); *Pacific Employer's Ins. Co. v. Industrial Accident Comm'n.*, 306 U.S. 493.

In an attempt to avoid traditional due process and full faith and credit analysis, the Jacksons have asked the Court to apply a more exacting standard. Although at one time a more exacting standard was required under the full faith and credit clause than under the due process clause for evaluating the constitutionality of choice of law decisions, this Court has since abandoned the weighing of interests requirement. *Carroll v. Lanza*, 349 U.S. 408; *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 308 n.10. Since *Carroll v. Lanza* was decided, the Supreme Court has recognized that both the due process and the full faith and credit clauses are satisfied if the forum has such significant contacts with the litigation that it has a legitimate state interest in applying its own law. *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 333. There is no precedent or reason to support a different standard in this situation. Jackson's argument that a more rigid standard should be followed under full faith and credit clause analysis should be rejected.

Petitioners have attempted to portray this case as something other than a case involving the selection of one state's substantive law over another, again in an effort to steer this Court from traditional due process and full faith and credit analyses. Petitioners claim that this case is one which involves the recognition of personal property rights established under the law of one state. They assert that in such a case, the forum state has no choice but to recognize those personal property rights, citing *Clark v. Williard*, 292 U.S. 112 (1934). This proposition cannot be found anywhere in that case.

The dispute in *Clark v. Williard* did not revolve around what title the liquidator in that case had, but rather how that title was acquired. Montana believed whatever title the Iowa liquidator had was derived from the judgment of an Iowa court, not an Iowa statute. Under Montana law, title (whatever it is) traced to a judgment is subject to attachment and execution. The Court stated:

> The Supreme Court of Montana has held that his title to the assets, if he has any, is derived, not from any statute, but from an involuntary assignment under a judgment of a foreign court. A title traced to such a source is subject in Montana to attachment and execution at the suit of local creditors. The question has been left unanswered whether attachments and executions are enforceable to the same extent in derogation of the title of a statutory successor.

292 U.S. 112, 114.

The first *Clark v. Williard* decision merely held that the Supreme Court of Montana had misinterpreted the Iowa court's judgment and Iowa statutes in holding that title to the assets was derived not from any statute but from a judgment of the Iowa courts. Accordingly, the decision was remanded to the Montana Supreme Court to determine whether the decision would be the same, that is, whether attachments and executions are enforceable to the same extent against a statutory successor as they would be against a successor who had acquired his title from a foreign judgment.

After remand, the Montana Supreme Court decided that its state laws permitted attachment and execution of a corporation's assets and that this rule prevailed against a statutory successor just as it did against a chancery

receiver. As stated by the Supreme Court in *Clark v. Williard*, 294 U.S. 211 (1935):

> The Supreme Court of Montana has reconsidered the conflicting claims of liquidator and creditors in the light of that decision. [*Clark v. Williard*, I] It has held (the Chief Justice and an associate justice dissenting) that the local policy of the state permits attachments and executions against insolvent corporations, foreign and domestic; that the writs will not be halted though the effect of the levy may be waste or inequality; and that this rule will prevail against a statutory successor, clothed with title to the assets, just as much as against the corporation itself or the trustees upon dissolution or a chancery receiver.

294 U.S. at 213.

The Supreme Court in *Clark v. Williard* II goes on to explain that every state has jurisdiction to determine for itself the liability of property within its territorial limits to seizure and sale under the process of its courts. 294 U.S. 211, 213. Petitioners dismiss this statement as dicta. However, Petitioners do not deny that the Supreme Court determined that the decision of the State of Montana to permit execution against the insolvent corporation was constitutional.

Petitioners fail to note that *Clark v. Williard* II relied upon a previous Supreme Court decision, *Hervey v. Rhode Island Locomotive Works*, 93 U.S. 664 (1877), which states:

> . . . the liability of property to be sold under legal process, issuing from the court of the State where it is situated, must be determined by the law there, rather than that of the jurisdiction where the owner lives. These decisions rest on

> the ground that every State has the right to regulate the transfer of property within its limits, and that whoever sends property to it impliedly submits to the regulations concerning its transfer in force there, although a different rule of transfer prevails in the jurisdiction where he resides.

93 U.S. 1003, 1004.

Not only is there no precedent to support Petitioners' proposition that a forum court must give recognition under the full faith and credit clause to property rights established under the law of a sister state, but such a proposition would conflict with *Clark v. Williard II* and *Hervey v. Rhode Island Locomotive Works*. By transferring and holding property in Indiana, Petitioners have impliedly submitted to Indiana law with regard to property ownership and its liability. 93 U.S. at 1004; *Clark v. Williard*, 294 U.S. 211, 213. Petitioners' proposition would also lead to the absurd result that no matter what the situation, where a conflict arises, a forum court could never apply its own law. *Alaska Packers*, 294 U.S. at 547.

Petitioners argue in sections C and D of their Petition that there is no conflict between Arizona community property law and Indiana law. This argument is somewhat contrived. Since, for purposes of this argument section, it is assumed that the property held by Petitioners prior to its fraudulent transfer was community property and consequently not subject to execution, there is certainly a conflict in the substantive law of Arizona and Indiana, since Indiana determined that the property *was* subject to execution. Nonetheless, these arguments really raise nothing for this Court to review since the Indiana Court of Appeals chose to apply Indiana law and

determined that the property held by Petitioners was subject to execution.[1] Thus, the only question before this Court is whether that choice was constitutional. See *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 306 n.6. As demonstrated above, that choice was constitutional.

3. Petitioners have not raised a substantial federal question.

The issues raised by Petitioners do not merit the review of this Court. The issues have been recently discussed and sufficiently addressed in the recent cases of *Sun Oil Co. v. Wortman*, 486 U.S. 717 (1988); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985); *Allstate Insurance Company v. Hague*, 449 U.S. 302 (1981). These cases have determined that the minimum requirements imposed by the full faith and credit clause are, in a context such as this, the same as those imposed by the due process clause. *Sun Oil Co. v. Wortman*, 486 U.S. 717, n.3; *Allstate Insurance Company v. Hague*, 449 U.S. 302, 308 n.10. These cases have pronounced a consistent standard of review. A forum state should not apply its law unless it has "a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair." *Phillips*

---

[1] Again, for purposes of this argument, it is assumed that the Indiana Court of Appeals recognized a conflict between Arizona and Indiana law, but chose to apply Indiana law. As argued in the preceding section, Russell believes the Indiana Court of Appeals did not afford the Jacksons the protection of Arizona community property law because the Jacksons did not intend to hold these particular assets as community property even under Arizona law.

Petroleum, supra, 472 U.S. at 818, *quoting Allstate Insurance Company v. Hague,* 449 U.S. at 312-313.

The judgment of the Indiana Court of Appeals is not as far reaching as Petitioners suggest; rather, it is extremely narrow. The Indiana Court of Appeals' decision is limited to its very specific facts. This situation will only arise again where a resident of a community property state commits acts in a sister state which result in judgment against him and where the community property resident attempts to shield property located in the forum state from execution by relying on the community property laws of his state of residence. The Court of Appeals of Indiana correctly determined that Indiana law should apply to these facts. Petitioners have not raised a substantial federal question which would merit the review of this Court.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

ROBERT F. ZOCCOLA
ALAN S. BROWN
TODD J. KAISER
LOCKE REYNOLDS BOYD & WEISELL
1000 Capital Center South
201 North Illinois Street
Indianapolis, Indiana 46204
(317) 237-3800

Counsel for Respondents.